



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2017-0544; FRL-9975-37-Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Virginia;
Revisions to the Regulatory Definition of Volatile Organic Compound**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving two state implementation plan (SIP) revisions (Revision C16 and Revision I16) formally submitted by the Commonwealth of Virginia (Virginia). The revisions pertain to amendments made to the definition of “volatile organic compound” (VOC) in the Virginia Administrative Code to conform with EPA’s regulatory definition of VOC. Specifically, these amendments remove the record keeping and reporting requirements for t-butyl acetate (also known as tertiary butyl acetate or TBAC); Chemical Abstracts Service [CAS] number: 540-88-5) and add 1,1,2,2,-Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2; CAS number: 406-78-0) as a compound excluded from the regulatory definition of VOC, which match actions EPA has taken. EPA is approving these revisions to update the definition of VOC in the Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2017-0544. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Sara Calcinore, (215) 814-2043, or by e-mail at calcinore.sara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO_x) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for

regulatory purposes. It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound is of negligible reactivity.

Compounds that are less or equally reactive as ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) and was supplemented subsequently with the "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans" (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On September 30, 1999, EPA proposed to revise the regulatory definition of VOC in 40 CFR 51.100(s) to exclude TBAC as a VOC (64 FR 52731). In most cases, when a negligibly reactive VOC is exempted from the definition of VOC, emissions of that compound are no longer recorded, collected, or reported to states or the EPA as part of VOC emissions. However, EPA's final rule excluded TBAC from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC (69 FR 69298, November 29, 2004) (2004 Final Rule). This was primarily due to EPA's conclusion in the 2004 Final Rule that "negligibly reactive" compounds may contribute significantly to ozone formation if present in sufficient quantities and that emissions of these compounds need to be represented accurately in photochemical modeling

analyses. Per EPA's 2004 Final Rule, Virginia partially excluded TBAC from the regulatory definition of VOC, which was approved into Virginia's SIP on August 18, 2006 (71 FR 47742).

When EPA exempted TBAC from the VOC definition for purposes of control requirements in the 2004 Final Rule, EPA created a new category of compounds and a new reporting requirement that required that emissions of TBAC be reported separately by states and, in turn, by industry. However, EPA did not issue any guidance on how TBAC emissions should be tracked and reported. Therefore, the data that was reported as result of these requirements was incomplete and inconsistent. Also, in the 2004 Final Rule, EPA stated that the primary objective of the recordkeeping and reporting requirements for TBAC was to address the cumulative impacts of "negligibly reactive" compounds and suggested that future exempt compounds may also be subject to such requirements. However, such requirements were not included in any other proposed or final VOC exemptions.

Because having high quality data on TBAC emissions alone was unlikely to be useful in assessing the cumulative impacts of "negligibly reactive" compounds on ozone formation, EPA subsequently concluded that the recordkeeping and reporting requirements for TBAC were not achieving their primary objective of informing more accurate photochemical modeling in support of SIP submissions. Also, there was no evidence that TBAC was being used at levels that would cause concern for ozone formation and that the requirements were providing sufficient information to evaluate the cumulative impacts of exempted compounds. Therefore, because the requirements were not addressing EPA's concerns as they were intended, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (February 25, 2016, 81 FR 9339).

On August 1, 2016, EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC (81 FR 50330). This action was based on EPA's consideration of the compound's negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. EPA's rationale for this action is explained in more detail in the final rule for this action. *See* 81 FR 50330 (August 1, 2016).

II. Summary of SIP Revision and EPA Analysis

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), the Virginia State Air Pollution Control Board amended the definition of VOC in 9VAC5-10-20 to remove the recordkeeping and reporting requirements for TBAC and add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC. On July 31, 2017, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), formally submitted these amendments as two requested revisions (Revision C16 and Revision I16) to the Virginia SIP. Revision C16 requested that the definition of VOC be updated in the Virginia SIP to conform with EPA's February 25, 2016 (81 FR 9339) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC. Revision I16 requested that the definition of VOC be updated in the Virginia SIP to conform with EPA's August 1, 2016 (81 FR 50330) final rulemaking updating EPA's regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-347pcf2 to the list of compounds excluded from EPA's regulatory definition of VOC.

Virginia's amendments to the definition of VOC in 9VAC5-10-20 are in accordance with EPA's

regulatory changes to the definition of VOC in 40 CFR 51.100(s) and are therefore approvable for inclusion in the Virginia SIP in accordance with CAA section 110. Also, because EPA has made the determination that TBAC and HFE-347pcf2 are of negligible reactivity and therefore have low contributions to ozone as well as low likelihood of risk to human health or the environment, removing these chemicals from the definition of VOC in the Virginia SIP as well as the recordkeeping and reporting requirements for these chemicals will not interfere with attainment of any NAAQS, reasonable further progress, or any other requirement of the CAA. Thus, the removal of the recordkeeping and reporting requirements for TBAC and the addition of HFR-347pcf2 to the list of compounds excluded from the regulatory definition of VOC is in accordance with CAA section 110(l).

On December 27, 2017 (82 FR 61200), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of Revision C16, which updated the definition of VOC in the Virginia SIP to remove the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC, and Revision I16, which updated the definition of VOC in the Virginia SIP by adding HFE-347pcf2 to the list of compounds excluded from EPA's regulatory definition of VOC. No public comments were received on the NPR.

III. Final Action

EPA is approving both Revision C16 and Revision I16, submitted on July 31, 2017 by VADEQ, as revisions to the Virginia SIP, as the submissions meet the requirements of CAA section 110. Revision C16 updates the regulatory definition of VOC in the Virginia SIP by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory

requirements related to the use of TBAC as a VOC. Revision I16 updates the regulatory definition of VOC in the Virginia SIP to add HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC.

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a

privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any

state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to the definition of VOC in 9VAC5-10-20 of the Virginia Administrative Code discussed in Section II of this preamble. EPA has made, and will continue to make, these materials generally available through <http://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.¹

VI. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

¹ 62 FR 27968 (May 22, 1997).

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the

Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action updating the definition of VOC in the Virginia SIP by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements related to the use of TBAC as a VOC and adding HFE-347pcf2 to the list of compounds excluded from the regulatory definition of VOC may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 26, 2018.

Cosmo Servidio,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. In § 52.2420, the table in paragraph (c) is amended by adding two entries for “Section 5-10-20” after the entry for “Section 5–10–20” (with the State effective date of 7/30/15) to read as follows:

§ 52.2420 Identification of plan.

* * * *

(c) * * *

EPA-APPROVED VIRGINIA REGULATIONS AND STATUTES

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
9 VAC 5, Chapter 10 General Definitions [Part I]				
* * * *				
5-10-20	Terms Defined	12/15/16	<u>[Insert date of publication in the Federal Register],</u> <u>[Insert Federal Register citation]</u>	Definition of “volatile organic compound” is revised by removing the recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory

State citation	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
				requirements related to the use of t-butyl acetate (also known as tertiary butyl acetate or TBAC) as a VOC.
5-10-20	Terms Defined	5/19/17	<u>[Insert date of publication in the Federal Register], [Insert Federal Register citation]</u>	Definition of “volatile organic compound” is revised by adding 1,1,2,2,- Tetrafluoro-1-(2,2,2-trifluoroethoxy) ethane (also known as HFE-347pcf2) to the list of compounds excluded from the regulatory definition of VOC.

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[FR Doc. 2018-04937 Filed: 3/12/2018 8:45 am; Publication Date: 3/13/2018]